

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

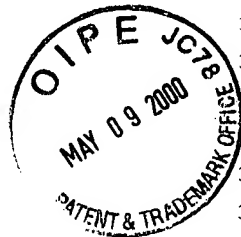
In re Reissue Application of
U.S. Patent No. 5,681,932

Brian W. GRINNELL

Application No.: 09/384,327

Filed: August 26, 1999

For: METHOD OF USING EUKARYOTIC
EXPRESSION VECTORS
COMPRISING THE BK VIRUS
ENHANCER



Group Art Unit: 1636

Examiner: James Ketter

#5
L.G.J.
5/10/00

DECLARATION UNDER 37 C.F.R. §1.175(a)

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

I, Brian W. Grinnell, the undersigned Petitioner, hereby declares that I reside at 3625 East 71st Street, Indianapolis, Indiana 46220, and that I am a citizen of the United States. I believe that I am the first, original and sole inventor of the subject matter which is claimed in this application for reissue and for which reissue of the original Letters Patent on the invention entitled "METHOD OF USING EUKARYOTIC EXPRESSION VECTORS COMPRISING THE BK VIRUS ENHANCER" is sought. I do not believe that the invention was ever known or used before the my invention thereof was made.

The entire right, title and interest in and to United States Letters Patent No. 5,681,932, granted October 28, 1997, and entitled "METHOD OF USING EUKARYOTIC EXPRESSION VECTORS COMPRISING THE BK VIRUS ENHANCER" is vested in Eli Lilly

and Company, a corporation existing under the laws of the State of Indiana, having a place of business at Lilly Corporate Center, Indianapolis, Indiana 46285.

Petitioner further declares the following:

Petitioner verily believes United States Letters Patent No. 5,681,932 may be at least partly inoperative for the reason that Petitioner claimed less than Petitioner had the right to claim in the patent.

The first set of claims to be added defines a human protein C having a glycosylation pattern differing from that of human plasma protein C. *See*, claims 5-16 and 19-33. Support for claims of this scope may be found at the very least at from page 16, line 59 to page 17, line 64. Support for additional recitations in claims 6, 7, and 10-16 may be found at the very least in Example 19 at pages 67-68. It was error for Petitioner to omit a set of claims defining the human protein C in this manner in the Patent.

In addition, new claim 17 defines a recombinant γ -carboxylated protein by the process used to produce the protein. Support for this claim may be found at the very least at page 15, lines 36-60. It was error for Petitioner to omit a claim of this scope.

New claim 18 to be added defines activated human protein C as a product-by-process claim. Support for a claim of this scope may be found at the very least in Example 19 at pages 67-68. It was error for Petitioner to omit such a claim in the Patent.

New claim 34 defines a human protein C having increased anticoagulant activity as compared to plasma human protein C. Support for this claim may be found at the very least at page 16, lines 37-39. It was error for Petitioner to omit a claim of this scope in the Patent.

Since this reissue was filed within two years of the issue date of the above-identified patent, broader claims than those in the issued patent are permissible.

This application for reissue of the original Letters Patent addresses the above-identified errors in Petitioner claiming less than Petitioner had the right to claim in the patent by adding new claims as identified *supra*. All errors which are being corrected in the present reissue application up to the time of filing of this declaration arose without any deceptive intention on the part of the applicant.

Petitioner has reviewed and understands the contents of the specification, including the claims, as amended in the specification for the reissue application and the amendment submitted herewith.

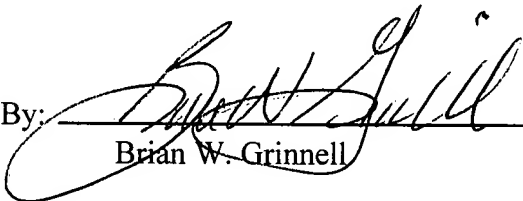
Petitioner acknowledges the duty to disclose information of which Petitioner is aware and which is material to the examination of this application for reissue.

The undersigned hereby declares further that all statements made herein of his own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section

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Attorney's Docket No. 008439-029

1001 of title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

By: 
Brian W. Grinnell

3625 East 71st Street
Indianapolis, Indiana 46220

Date: 4/20/00